

discussion

A G 46

1951

Feb. 23

Mr. Jere A. Vance  
Director of Administration  
University of New Hampshire  
Durham, New Hampshire

Dear Sir:

In reference to your letter of February 16, 1951 requesting an opinion as to whether or not two students of the University of New Hampshire have established their domicile in the state, it is my opinion that a determination that both students have acquired a domicile in New Hampshire would be reasonable on the basis of the facts presented.

When a person reaches majority, he may abandon his old domicile and establish a new one independent from that of his parents. The determination of a change in domicile is a difficult one and is "primarily a question of fact under the circumstances of the particular case." Taylor v. Taylor, 15 N. H. 252, 253. In order to abandon an old domicile and establish a new one, "... there must exist both the fact of personal presence in the new place and the intention to make that new place a home." 1. Taylor, Conflict of Laws 1: 15.2

The fact that the students are residing in Durham should not be considered in determining their domicile. The election law specifically states "... no person shall be deemed to have changed his residence by reason of his presence or absence ... while a student of any university of learning ..." Section 10, of page 31, Revised Laws, as amended by chapter 100, Laws of 1943.

The facts presented in these cases indicate that both students have established residence in this state independent of their status as students. The question of inten-

NEW HAMPSHIRE LAW LIBRARY

SEP 03 1998

CONCORD, N.H.

C O P Y

Dr. Hilton C. Buley

- 2 -

February 27, 1951

Connell v. Board of School Directors, 356 Pa. 585; New Haven v. Torrington, 132 Conn. 194; Haas v. School District, 69 S.D. 303; School District v. Parker, 238 Iowa 984; Cook v. School District, 12 Colo. 453. The language of our Constitution, quoted above, is so explicit, that we would be compelled to the same conclusion, even in the absence of supporting case law elsewhere.

On the question of tuition payments of students attending schools or academies other than those approved by the State Board of Education, the answer is equally clear in view of the language in R.L.C. 138, s. 26, as amended, limiting tuition payments to attendance at "an approved public high school or public school of corresponding grade in another district or an approved public academy". Section 21 of the same chapter enables school districts to enter into contracts with "an academy, high school or other literary institution located in this or, when distance or transportation facilities make it necessary, in another state, and raise and appropriate money to carry the contract into effect", but section 22 defines the terms "high school, academy or literary institution" to be such as are "approved" by the state board, and tuition payments by school districts are confined by s. 26, as amended, to schools so "approved".

Although not necessary to this opinion, it may be added in passing that the approval by the state board of a private school, for purposes of tuition payments, would raise serious Constitutional problems. New Hampshire Constitution, Part I, Article 12; See Holt v. Antrim, 64 N.H. 284; Opinion of the Justices, 85 N.H. 562.

Very truly yours,

Wm. S. Green  
Deputy Attorney General

WSG:HF